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Date: November 10, 2006

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November 10, 2006

VIA US MAIL, FAX AND E-MAIL (PDF SCAN)

George Horvath, Esq.
Assistant Attorney General
Office of the Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428

Re: Miller Salvage/Fred Miller

Dear Mr. Horvath:

Recently you had the opportunity to talk to my partner, Mark Norman, regarding the Consent Order issued on April 15, 2005 by Judge Deering of the Pike County Court of Common Pleas. Your conversation centered on the continued disregard of the Consent Order by Fred Miller and Miller Salvage, Inc. (hereinafter collectively "Defendant Miller"). These discussions have come up in the context of Ohio EPA's concern that the detention pond on the Miller Salvage site (the "Site") is at risk of overflowing again. This is the same situation that presented itself in the spring of 2004.

I recognize that you were not involved with this matter at that time, and that some of those at your office who were involved are no longer with the Ohio Attorney General's (AG) office. Given the amount of time, attention and money that our client, Mill's Pride LLC ("Mill's Pride"), has invested in this situation, I feel it is incumbent upon me to take this opportunity to provide some background for your consideration.

In late May of 2004, Steve Bemis, Associate Corporate Counsel for Masco Corporation ("Masco"), the parent company of Mill's Pride, and I met with John Cayton and Melissa Yost of the AG's office. We came to that meeting with a proposal to remove residual sawdust from what was referred to as the "old footprint" on a voluntary basis to help with the State's efforts in regard to the Site. We presented the State with a proposed work plan at that time.

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Following the meeting, in view of the heavy rains which then began and raised the leachate level in the Site's detention pond, we re-contacted Ms. Yost and volunteered that instead of Mill's Pride removing the old footprint material, Mill's Pride was willing to assist in averting an environmental disaster should the Site's inadequate detention pond continue to overflow leachate or if there was a catastrophic failure of the pond embankment. Ms. Yost was open to our suggestion.

As a result, Mill's Pride withdrew the old footprint work plan. In its place, Mill's Pride identified outlets for the leachate and began a program of continuous loading and transport of the leachate on an emergency basis. There was no financial contribution from Defendant Miller in this effort. It should also be noted that Mill's Pride had unilaterally removed a limited amount of leachate after the pond began overflowing into the lower meadow on May 27, 2004.

As noted in the attached e-mail, Mill's Pride agreed to continue removing leachate until the earlier of (a) September 30, 2004 or (b) the construction by Defendant Miller of an expanded detention pond and related systems to retain and otherwise manage leachate at the Site. We agreed to take these actions upon agreement by the AG's office (1) to expedite enforcement against Defendant Miller to accomplish long-term leachate control and (2) not to assert against Mill's Pride, Masco or any of their affiliates any theory of liability or take any enforcement action against such parties based on the argument that the voluntary leachate removal constitutes a precedent of any kind, an admission of liability or an admission against interest by Mill's Pride.

From the time Mill's Pride began leachate removal until it was halted, Mill's Pride expended over \$800,000 and removed over 5.2 million gallons of leachate from the pond and the saturated pile (in the face of original estimates of 200-300,000 gallons) only to watch Miller Salvage miss deadlines under the Consent Order as well as re-saturate the pile and violate the Consent Order by running sprinklers on top of the pile. Mill's Pride has no interest in undertaking such an effort again, particularly when Defendant Miller is in contempt of the Consent Order. This Consent Order requires, in part that:

The Defendants shall maintain at least two (2) feet of freeboard space in the new leachate pond and at least one (1) foot of freeboard space in the existing leachate pond. *Defendants shall immediately commence proper removal of leachate for authorized land application, treatment, or permitted disposal should the freeboard space become less than two (2) feet in the new pond or one (1) foot in the old pond.* (emphasis added)

Notwithstanding other provisions of the Consent Order that have been or are being violated by Defendant Miller, it would appear that in a contempt proceeding, the State has an immediate and readily available mechanism by which to require Defendant Miller to properly manage leachate.

In terms of Defendant Miller's ability to finance the proper management and/or removal of the leachate, we have previously provided information relevant to that question to Greg Poulos and Ms. Yost of your office. In order to assist your further evaluation of Defendant

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Miller's financial capabilities, Mill's Pride has prepared the attached Executive Summary based on its knowledge of amounts Mill's Pride has paid over the years and other relevant data either estimated or known from Mill's Pride operations. The bottom line information that is relevant to the economic issues that you and Mr. Norman discussed recently is as follows:

1) Mill's Pride paid Defendant Miller approximately \$6.8 million from the early 1990's through July, 2004.

2) Since the sawdust pile was largely stored and grew to huge size during this early period, we estimate there was comparatively little expense and comparatively large net profit retained from the \$6.8 million.

3) We estimate Defendant Miller's revenues from July, 2004 through May, 2006 to be another \$2.8 million (\$1.0 million from Mill's Pride, \$1.4 million from Smurfit-Stone the ultimate customer and \$0.3 million from local landfill customers).

4) We estimate Defendant Miller had net profits of \$0.8 million from this \$2.8 million (28.5%); if he spent \$0.2 million to build the new detention pond (as stated in his 2005 pond permit application to the State), his net was still \$0.6 million (21.4% on revenues of \$2.8 million).

5) In addition to the \$6.8 million prior to 2004 and the \$1.0 million 2004-2006 for sawdust hauling, Mill's Pride paid \$0.8 million in 2004 voluntarily to haul leachate from the Miller site to forestall a repeat of the 2003 environmental incident which was allowed by Defendant Miller, for total Mill's Pride payments to or on behalf of Defendant Miller of approximately \$8.6 million.

At this stage, Mill's Pride sees no barriers to the State forcing Defendants Fred Miller and Miller Salvage to address the leachate issue in accordance with the Consent Order.

Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



William D. Hayes

WDH/wdh
Enclosures

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cc: Dale Vitale, Ohio AG, EES
Steve Bernis, Associate Corporate Counsel, Masco
Steve Rine, Ohio EPA
Daniel Bergert, Ohio EPA



Executive Summary

Estimated Miller Financial Picture Pre – and Post – July, 2004

From July of 2004 through May of 2006, Mill's Pride supplied Miller Salvage with dry sawdust for use as a blending agent with the Miller Pile material. The blended material was then sent to Smurfit Stone for use as a boiler fuel or the blend was used by Miller to supply area landfills for use as a solidification agent.

During the period mentioned above Mills Pride supplied Miller salvage with 69,993 tons of sawdust and subsidized Miller Salvage at a rate of \$15/ton during the vast majority of this period. Miller Salvage used this sawdust blended together with the Miller pile material to send 82,441 tons of the blend to Smurfit Stone Container, for which Miller was also compensated by Smurfit-Stone at a rate of \$17.50/ton. Miller Salvage also used part of the above Mill's Pride sawdust to blend with Miller Salvage pile material which became 99,664 tons of the blend which was sold by Miller Salvage to various landfills in the area for \$ 50.00 to \$ 75.00 per truckload (Approximately 22 tons per truckload), which was a loading fee, as the landfills provided their own trucking.

Estimated revenue generated for Miller Salvage from the above operations 7/04 – 5/06.

Mills Pride subsidy to Miller Salvage	\$ 1,032,540
Estimated Smurfit Stone payments to Miller Salvage for fuel blend	\$ 1,442,750
Landfill payments to Miller Salvage for solidification blend	\$ 283,136
Total Revenue in period	\$ 2,758,426

Estimated Miller pile costs of operations 7/04 – 5/06.

The two major cost factors considered during these operations were trucking the material and the blending operations occurring at the Miller Salvage pile.

No trucking expenses were involved in the material sold to the landfills in the area, as the landfills provided their own trucking and were charged a flat rate for a truckload of material. Minimal trucking costs were involved in trucking the material from Mill's Pride to the Miller pile site, as the Mill's Pride site is on the way back from Smurfit Stone, so the trucks could then return to their home base utilizing part of the normally empty run stopping by Mill's Pride to fill up with a load of sawdust. Since the blending operation required one load of dry material from Mill's Pride to generate two loads of boiler fuel, twice as many trips were made to Smurfit

Stone than from Mill's Pride to the Miller pile. Essentially, these trips from Mill's Pride to the Miller Pile were conducted at minimal cost, as they were part of the trucks return trip to Miller Salvage.

To stay on the conservative side of these costs we used our current trucking expenses. The current firm we utilize is operating with newer equipment, paying higher wages than Miller, provides benefits for his employees, which Miller did not, is paying significantly higher fuel costs than the referenced time period, and is still making a profit. We feel confident using this as an estimate for Miller's earlier costs and staying very conservative in comparison with Miller Salvage. Our current trucking cost to Smurfit Stone is \$ 20.45/ton. Therefore, the Miller cost of trucking during the period would be below \$20.45/ton, and be inclusive of a profit margin.

<u>Income and expenses from all sources during period 7/04 – 5/06</u>	\$ 2,758,426
82,441 tons of material trucked to Smurfit Stone times \$ 20.45/ton = 1,685,918)	(\$
Income net of Trucking =	\$ 1,072,508
Margin Assumption of 5% on Smurfit Stone Trucking Business =	\$ 84,296
Remaining Income to be applied to Blending & Loading Ops.	\$ 1,156,804
We estimated these blending/yard operations would require a labor cost of 5 employees full time and used \$10/Hour \$ 20,800/year for wages and benefits for an annual cost of \$ 104,000 X 23/12 =	(\$ 199,333)
We estimated that the lease costs for two large wheeled front Loaders would be \$ 4,150.63 /month costs for the period of 190,928)	(\$
Income Net of Trucking & Blending Costs	\$ 766,543

Mill's Pride has earlier estimated that it had spent \$6,723,730 in payments to Miller prior to July of 2004. From that point in time to current, Mill's Pride paid to Miller an additional \$1,032,540 as noted above plus \$808,538 to dewater the pile in the summer of 2004 bringing Mill's Pride's spend relative to the Miller Pile to a total of \$8,564,808.

From the exercise above, we estimate that since 2004 Miller has realized \$766,543 net of operating costs and had the benefit of Mill's Pride assistance to prevent leachate overflow of \$808,538, only to watch Miller miss the deadlines under his consent order for the pond construction, as well as re-saturate the pile by running sprinklers (2) on the top of the pile in breach of the same order. THIS IS IN ADDITION TO THE NET PROFITS FROM \$6,723,730 PAID PRIOR TO 2004, WHICH WE CANNOT ESTIMATE, BUT BELIEVE WERE

SUBSTANTIAL SINCE VERY LITTLE WORK WAS DONE TO REMOVE THE PILE PRIOR TO 2004 AS IT GREW TO A HUGE SIZE.

Finally, in an effort to provide Miller with incentive to act expeditiously to eliminate the pile, in early 2006, Mill's Pride developed a rate reduction schedule based on the remaining volume in the pile and the reduction of activity at the pile as the footprint reduced, while also expressing an interest for the trucking service to continue once the pile was gone. Miller Salvage chose to end the business arrangement rather than attempting the plan. As a result, Mill's Pride secured trucking and the ability to provide the sawdust directly to the end user, which is what is currently in place today.